

SENATE BILL No. 190

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-4.1; IC 29-1; IC 29-3; IC 30-1-5-1; IC 30-4-1; IC 30-5; IC 34-45-2-4.

Synopsis: Numerous changes to probate, trust, and tax laws. Provides that an inheritance tax affidavit may be filed stating that no inheritance tax is due. Creates exceptions to the "dead man's statute". Creates penalties for failure to recognize the authority of an attorney in fact. Changes various probate and tax deadlines. Increases the surviving spouse allowance. Adds rules of construction concerning nonprobate transfers. Changes notice requirements for supervised estates. Makes other numerous changes to the probate, trust, and tax laws. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2001.

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January 9, 2001, read first time and referred to Committee on Judiciary.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 190

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-4-0.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 0.5. (a) No inheritance
3 tax return is required under this chapter unless the total fair market
4 value of the property interests transferred by the decedent to a
5 transferee under a taxable transfer or transfers exceeds the exemption
6 provided to the transferee under ~~sections 9-1 through 12 of IC 6-4.1-3.~~
7 **IC 6-4.1-3-10 through IC 6-4.1-3-12.** For purposes of this section, the
8 fair market value of a property interest is its fair market value as of the
9 appraisal date prescribed by IC 6-4.1-5-1.5.

10 **(b) The department of state revenue shall prescribe the affidavit**
11 **form that may be used to state that no inheritance tax is due after**
12 **applying the exemptions under IC 6-4.1-3. The affidavit may be:**

13 **(1) recorded in the office of the county recorder if the**
14 **affidavit includes the legal description of the real property in**
15 **the decedent's estate; or**

16 **(2) submitted to the department of state revenue or the**
17 **appropriate county assessor with a request for a consent to**



transfer under IC 6-4.1-8-4.

(c) If the department of state revenue or the appropriate county assessor consents to a transfer of personal property under IC 6-4.1-8-4 after considering an affidavit described in subsection (b), the full value of the personal property may be transferred.

(d) The department of state revenue or the appropriate county assessor may rely upon an affidavit prescribed by the department of state revenue under subsection (b) to determine that a transfer will not jeopardize the collection of inheritance tax for purposes of IC 6-4.1-8-4(e).

(e) It is presumed that no inheritance tax is due and that no inheritance tax return is required if an affidavit described in subsection (b) was:

(1) properly executed; and

(2) recorded in the decedent's county of residence.

(f) Except as provided in subsection (g), a lien attached under IC 6-4.1-8-1 to the real property owned by a decedent terminates when an affidavit described in subsection (b) is:

(1) properly executed; and

(2) recorded in the county in which the real property is located.

(g) A lien terminated under subsection (f) is reattached to the real property under IC 6-4.1-8-1 if the department of state revenue obtains an order that an inheritance tax is owed.

SECTION 2. IC 6-4.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the appropriate probate court within ~~twelve~~ **nine (9)** months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers;

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each

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transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

SECTION 3. IC 6-4.1-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. If the appropriate probate court finds that because of an unavoidable delay an inheritance tax return cannot be filed within ~~twelve (12)~~ **nine (9)** months after the date of decedent's death, the court may extend the period for filing the return. After the expiration of the first extension period, the court may grant a subsequent extension if the person seeking the extension files a written motion which states the reason for the delay in filing the return. For purposes of sections 3 and 6 of this chapter, an inheritance tax return is not due until the last day of any extension period or periods granted by the court under this section.

SECTION 4. IC 6-4.1-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) Except as otherwise provided in section 0.5 of this chapter, the personal representative of a nonresident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the department of state revenue within ~~twelve (12)~~ **nine (9)** months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers;

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall

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attach a copy of the decedent's will to the return.

SECTION 5. IC 6-4.1-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The inheritance tax imposed as a result of a decedent's death is a lien on the property transferred by ~~him~~ **the decedent**. Except as otherwise provided in IC 6-4.1-6-6(b), the inheritance tax accrues and the lien attaches at the time of the decedent's death. The lien terminates when the inheritance tax is paid, **when an affidavit stating that no inheritance tax is due is recorded under IC 6-4.1-4-0.5**, or five (5) years after the date of the decedent's death, whichever occurs first. In addition to the lien, the transferee of the property and any personal representative or trustee who has possession of or control over the property are personally liable for the inheritance tax.

SECTION 6. IC 6-4.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as otherwise provided in IC 6-4.1-6-6(b), the inheritance tax imposed as a result of a decedent's death is due ~~eighteen (18)~~ **twelve (12)** months after ~~his~~ **the person's** date of death. If a person liable for payment of inheritance tax does not pay the tax on or before the due date, ~~he~~ **the person** shall, except as provided in subsection (b) of this section, pay interest on the delinquent portion of the tax at the rate of ten percent (10%) per year from the date of the decedent's death to the date payment is made.

(b) If an unavoidable delay, such as necessary litigation, prevents a determination of the amount of inheritance tax due, the appropriate probate court, in the case of a resident decedent, or the department of state revenue, in the case of a non-resident decedent, may reduce the rate of interest imposed under this section, for the time period beginning on the date of the decedent's death and ending when the cause of delay is removed, to six percent (6%) per year.

SECTION 7. IC 6-4.1-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. If the inheritance tax imposed as a result of a decedent's death is paid within ~~one (1) year~~ **nine (9) months** after ~~his~~ **the person's** date of death, the person making the payment is entitled to a five percent (5%) reduction in the inheritance tax due. When payment is so made, the person collecting the tax shall grant the five percent (5%) reduction to the payor.

SECTION 8. IC 6-4.1-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The Indiana estate tax accrues at the time of the decedent's death. Except as provided in subsection (b) of this section, the Indiana estate tax is due ~~eighteen (18)~~ **twelve (12)** months after the date of the decedent's death.



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(b) Any Indiana estate tax ~~which that~~ results from a final change in the amount of federal estate tax is due:

(1) eighteen (18) months after the date of the decedent's death; or

(2) one (1) month after final notice of the federal estate tax due is given to the person liable for the tax;

whichever is later.

SECTION 9. IC 6-4.1-11.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. The transfer tax is due ~~eighteen (18)~~ **twelve (12)** months after the date of death of the person whose death resulted in the generation-skipping transfer.

SECTION 10. IC 29-1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The surviving spouse of a decedent who was domiciled in Indiana at his death is entitled from the estate to an allowance of ~~fifteen~~ **twenty-five** thousand dollars (~~\$15,000~~) **(\$25,000)**. The allowance may be claimed against the personal property of the estate or a residence ~~of the surviving spouse;~~ **that is a part of the decedent's estate**, or a combination of both. If there is no surviving spouse, the decedent's children who are under eighteen (18) years of age at the time of the decedent's death are entitled to the same allowance to be divided equally among them. If ~~there is the personal property and a residence that is a part of the decedent's estate~~ **are less than** ~~fifteen~~ **twenty-five** thousand dollars (~~\$15,000~~) **(\$25,000)** in ~~personal property in the estate and residence of the surviving spouse;~~ **value**, the spouse or decedent's children who are under eighteen (18) years of age at the time of the decedent's death, as the case may be, are entitled to any real estate of the estate to the extent necessary to make up the difference between the value of the personal property plus the residence ~~of the surviving spouse~~ **that is a part of the decedent's estate** and ~~fifteen~~ **twenty-five** thousand dollars (~~\$15,000~~) **(\$25,000)**. The amount of that difference is a lien on the remaining real estate. An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

SECTION 11. IC 29-1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the

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administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within ~~three (3) months~~ **one (1) month** after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within ~~three (3) months~~ **one (1) month** after the first publication of notice under subsection (a) or as soon as possible after the elapse of ~~three (3) months~~ **one (1) month**. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within ~~three (3) months~~ **one (1) month** after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes ~~the period specified under IC 29-1-14-1 and~~ an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than ~~one (1) year~~ **nine (9) months** after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the

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person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, ~~19~~ **20** __, appointed personal representative of the estate of _____, deceased, who died on the ____ day of _____, ~~19~~ **20** __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within ~~five (5)~~ **three (3)** months from the date of the first publication of this notice, or within ~~one (1) year~~ **nine (9) months** after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ____ day of _____, ~~19~~ **20** __.

CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 12. IC 29-1-7-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7.5. (a) A personal representative shall exercise reasonable diligence to discover the reasonably ascertainable creditors of the decedent within ~~three (3)~~ **months one (1) month** of the first publication of notice under section 7 of this chapter.

(b) A personal representative is considered to have exercised reasonable diligence under subsection (a) if the personal representative:

- (1) conducts a review of the decedent's financial records that are reasonably available to the personal representative; and
- (2) makes reasonable inquiries of the persons who are likely to have knowledge of the decedent's debts and are known to the personal representative.

(c) A personal representative may file an affidavit with the clerk of the court stating that the personal representative has complied with the requirements of subsection (b). In addition, a personal representative may petition the court for an order declaring that:

- (1) the personal representative has complied with the requirements of subsection (b); and
- (2) any creditors not known to the personal representative after complying with the requirements of subsection (b) are not reasonably ascertainable.

(d) If a personal representative complies with the requirements of



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subsection (b), the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and creditors not discovered are presumed not reasonably ascertainable. The presumptions may be rebutted only by clear and convincing evidence.

SECTION 13. IC 29-1-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 17. Any interested person may contest the validity of any will in the court having jurisdiction over the probate of the will within ~~five (5)~~ **three (3)** months after the date of the order admitting the will to probate by filing in the court the person's allegations in writing verified by affidavit, setting forth:

- (1) the unsoundness of mind of the testator;
- (2) the undue execution of the will;
- (3) that the will was executed under duress or was obtained by fraud; or
- (4) any other valid objection to the will's validity or the probate of the will.

The executor and all other persons beneficially interested in the will shall be made defendants to the action.

SECTION 14. IC 29-1-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than ~~five (5)~~ **three (3)** months after the date of ~~original appointment of a general personal representative for the estate, the first published notice to creditors under IC 29-1-7-7(b),~~ a verified statement stating that the personal representative, or a prior personal representative, has done the following:

- (1) Published notice to creditors as provided in IC 29-1-7-7(b), and that the first publication occurred more than ~~five (5)~~ **three (3)** months prior to the date of the statement.
- (2) Provided notice to creditors as required under IC 29-1-7-7(c) and IC 29-1-7-7(d).
- (3) Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance, and other death taxes, except as specified in the statement. If any claims remain undischarged, the statement shall:
 - (A) state whether the personal representative has distributed the estate, subject to possible liability, with the agreement of



the distributees; or

(B) detail other arrangements which have been made to accommodate outstanding liabilities.

(4) Executed and recorded a personal representative's deed for any real estate owned by the decedent.

(5) Distributed all the assets of the estate to the persons entitled to receive the assets.

(6) Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative has actual knowledge whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected.

(7) Provided the court with the names and addresses of all distributees, creditors, and claimants to whom the personal representative has sent a copy of the statement under subdivision (6).

(b) If no proceedings involving the personal representative are pending in the court three (3) months after the closing statement is filed, the appointment of the personal representative terminates and the estate is closed by operation of law.

SECTION 15. IC 29-1-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in IC 29-1-7-7, all claims against a decedent's estate, other than expenses of administration and claims of the United States, the state, or a subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate, the personal representative, the heirs, devisees, and legatees of the decedent, unless filed with the court in which such estate is being administered within:

(1) ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

(b) No claim shall be allowed which was barred by any statute of limitations at the time of decedent's death.

(c) No claim shall be barred by the statute of limitations which was not barred at the time of the decedent's death, if the claim shall be filed within:

(1) ~~five (5)~~ **three (3)** months after the date of the first published

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1 notice to creditors; or
 2 (2) three (3) months after the court has revoked probate of a will,
 3 in accordance with IC 29-1-7-21, if the claimant was named as a
 4 beneficiary in that revoked will;
 5 whichever is later.

6 (d) All claims barrable under subsection (a) shall be barred if not
 7 filed within ~~one (1) year~~ **nine (9) months** after the death of the
 8 decedent.

9 (e) Nothing in this section shall affect or prevent any action or
 10 proceeding to enforce any mortgage, pledge, or other lien upon
 11 property of the estate.

12 (f) Nothing in this section shall affect or prevent the enforcement of
 13 a claim for injury to person or damage to property arising out of
 14 negligence against the estate of a deceased tortfeasor within the period
 15 of the statute of limitations provided for the tort action. A tort claim
 16 against the estate of the tortfeasor may be opened or reopened and suit
 17 filed against the special representative of the estate within the period
 18 of the statute of limitations of the tort. Any recovery against the tort
 19 feisor's estate shall not affect any interest in the assets of the estate
 20 unless the suit was filed within the time allowed for filing claims
 21 against the estate. The rules of pleading and procedure in such cases
 22 shall be the same as apply in ordinary civil actions.

23 SECTION 16. IC 29-1-14-2 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. No action shall be
 25 brought by complaint and summons against the personal representative
 26 of an estate for the recovery of any claim against the decedent or the
 27 decedent's estate, except in the enforcement of claims for injury to
 28 person or damage to property arising out of negligence as provided in
 29 section 1 of this chapter, but the holder thereof, whether such claim be
 30 due or not, shall file a succinct definite statement thereof in the office
 31 of the clerk of the court in which the letters were issued. The clerk shall
 32 send by United States mail or by personal service an exact copy of such
 33 statement to the personal representative of the estate. Any claims of the
 34 personal representative against the decedent shall be made out and
 35 filed in the office of the clerk of the court in which the letters were
 36 issued. If any claim against the decedent is founded upon any written
 37 instrument, alleged to have been executed by the decedent, the original
 38 or a complete copy thereof, shall be filed with the statement, unless it
 39 is lost or destroyed, in which case its loss or destruction must be stated
 40 in the claim. The statement shall set forth all credits and deductions to
 41 which the estate is entitled and shall be accompanied by the affidavit
 42 of the claimant or the claimant's agent or attorney, that the claim, after

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deducting all credits, set-offs, and deductions to which the estate is entitled, is justly due and wholly unpaid, or if not yet due, when it will or may become due, and no claim shall be received unless accompanied by such affidavit. If the claim is secured by a lien on any real or personal property, such lien shall be particularly set forth in such statement, and a reference given to where the lien, if of record, will be found. If the claim is contingent, the nature of the contingency shall also be stated. No statement of claim need be filed as provided in this section as to those claims which are paid by the personal representative within ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7. However, in instances where a cause of action was properly filed and commenced against a decedent prior to the decedent's death, the same shall be continued against the personal representative or successors in interest of the deceased, who shall be substituted as the party or parties defendant in such action, and in such instance it shall not be necessary for the claimant to file a claim as herein provided. In any action thus continued the recovery, if any, shall be limited as otherwise provided by law.

SECTION 17. IC 29-1-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. If a contingent claim shall have been filed and allowed against an estate, and all the assets of the estate including the fund, if any, set apart for the payment thereof, shall have been distributed, and the claim shall thereafter become absolute, the creditor shall have the right to recover thereon in the court having probate jurisdiction against those distributees whose distributive shares have been increased by reason of the fact that the amount of said claim as finally determined was not paid out prior to final distribution, provided an action therefor shall be commenced within ~~five (5)~~ **three (3)** months after the claim becomes absolute. Such distributees shall be jointly and severally liable, but no distributee shall be liable for an amount exceeding the amount of the estate or fund so distributed to him. If more than one (1) distributee is liable to the creditor, ~~he the distributee~~ shall make all distributees who can be reached by process parties to the action. By its judgment the court shall determine the amount of the liability of each of the defendants as between themselves, but if any be insolvent or unable to pay his proportion, or beyond the reach of process, the others, to the extent of their respective liabilities, shall nevertheless be liable to the creditor for the whole ~~among amount~~ **amount** of ~~his the~~ debt. If any person liable for the debt fails to pay ~~his the person's~~ just proportion to the creditor, ~~he the person~~ shall be liable to indemnify all who, by reason of such failure

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on ~~his~~ **the persons's** part, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

SECTION 18. IC 29-1-14-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) On or before ~~five (5) three (3)~~ months and fifteen (15) days after the date of the first published notice to creditors, the personal representative shall allow or disallow each claim filed within ~~five (5) three (3)~~ months after the date of the first published notice to creditors by making appropriate notations on the margin of the claim and allowance docket showing the action taken as to the claim. If a personal representative determines that the personal representative should not allow a claim in full, the claim shall be noted "disallowed". The clerk of the court shall give written notice to a creditor if a claim has been disallowed in full or in part. All claims that are disallowed, or are neither allowed nor disallowed within ~~five (5) three (3)~~ months and fifteen (15) days, shall be set for trial in the probate court upon the petition of either party to the claim. The personal representative shall make an appropriate notation of any compromise or adjustment on the margin of the claim and allowance docket. If the personal representative, after allowing a claim and before paying it, determines that the claim should not have been allowed, the personal representative shall change the notation on the claim and allowance docket from "allowed" to "disallowed" and give written notice to the creditor. If a claim has been paid in full or in part, the creditor shall:

- (1) release the claim to the extent that the claim has been paid; and
- (2) give written notice to the clerk of the court of the release.

(b) Claims for expenses of administration may be allowed upon application of the claimant or of the personal representative, or may be allowed at any accounting, regardless of whether or not they have been paid by the personal representative.

SECTION 19. IC 29-1-14-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. Unless an earlier date is authorized by the judge of the court having jurisdiction of the decedent's estate no proceedings shall be instituted before the end of ~~five (5) three (3)~~ months from the death of the decedent to enforce the lien of any judgment rendered against the decedent in his lifetime upon real estate or to enforce any decree specifically directing the sale of such real estate to discharge any lien or liability created or suffered by the decedent, nor shall any suit be brought before that time against the heirs or devisees of the deceased to foreclose any mortgage or other



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1 lien thereon; and in case of suit to foreclose any mortgage or other lien
 2 thereon, the personal representative shall be made a party defendant
 3 thereto; and if the personal representative shall be diligently
 4 prosecuting his proceedings to sell the real estate of the deceased for
 5 the purpose of making assets to discharge such liens, further
 6 proceedings for the sale thereof by the holders of liens thereon shall be
 7 stayed, upon the application of the personal representative. This section
 8 does not apply to cases where, before the end of the ~~five (5)~~ **three (3)**
 9 months, the real estate shall have been sold by the personal
 10 representative subject to liens thereon, nor to mortgages and judgments
 11 in favor of the state.

12 SECTION 20. IC 29-1-14-18 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 18. The personal
 14 representative may, if it appears for the best interests of the estate,
 15 compromise any claim against the estate, whether due or not due,
 16 absolute or contingent, liquidated or unliquidated, but if such claim is
 17 not filed such compromise must be consummated within ~~five (5)~~ **three**
 18 **(3)** months after the date of the first published notice to creditors. In the
 19 absence of prior authorization or subsequent approval by the court, no
 20 compromise shall bind the estate.

21 SECTION 21. IC 29-1-14-19 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 19. (a) The personal
 23 representative at any time shall pay the claims as the court shall order
 24 if the claims are filed within ~~five (5)~~ **three (3)** months after the date of
 25 the first published notice to creditors or the period allowed under
 26 IC 29-1-7-7, if applicable, and the court may require bond or security
 27 to be given by the creditor to refund such part of such payment as may
 28 be necessary to make payment in accordance with this title.

29 (b) Prior to the expiration of ~~five (5)~~ **three (3)** months after the date
 30 of the first published notice to creditors or the period allowed under
 31 IC 29-1-7-7, the personal representative, if the estate clearly is solvent,
 32 may pay any claims that the personal representative believes are just
 33 and correct, whether or not the claims have been filed. The personal
 34 representative may require bond or security to be given by the creditor
 35 to refund any part of the payment as the court may subsequently order.
 36 The personal representative, following all such payments, shall include
 37 them in the personal representative's next account and they shall be
 38 considered proper payments under this title if they are approved by the
 39 court as a part of the account.

40 (c) Upon the expiration of ~~five (5)~~ **three (3)** months after the date
 41 of the first published notice to creditors or the period allowed under
 42 IC 29-1-7-7 and the final adjudication of all claims filed against the

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1 estate, the personal representative shall proceed to pay the claims that
 2 have been allowed against the estate in accordance with this title that
 3 the personal representative has not paid.

4 (d) If it appears at any time that the estate is or may be insolvent,
 5 that there are insufficient funds on hand, or that there is other good or
 6 sufficient cause, the personal representative may report that fact to the
 7 court and apply for any necessary order.

8 SECTION 22. IC 29-1-14-21 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 21. When any person
 10 claims any interest in any property in the possession of the personal
 11 representative adverse to the estate, ~~he~~ **the person** may file, prior to the
 12 expiration of ~~five (5)~~ **three (3)** months after the date of the first
 13 published notice to creditors, a petition with the court having
 14 jurisdiction of the estate setting out the facts concerning such interest,
 15 and thereupon the court shall cause such notice to be given to such
 16 parties as it deems proper, and the case shall be set for trial and tried
 17 as in ordinary civil actions.

18 SECTION 23. IC 29-1-16-6 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. Upon the filing of
 20 any account in a decedent's estate, hearing and notice thereof shall be
 21 had as follows:

22 (a) If the account is for final settlement the court or clerk shall set
 23 a date by which all objections to such final account and petition for
 24 distribution must be filed in writing and the clerk shall give notice to
 25 all persons entitled to share in the final distribution of said estate that
 26 a final report has been filed and will be acted upon by the court on the
 27 date set unless written objections are presented to the court on or
 28 before that date. ~~Notice shall further be given by one (1) publication in~~
 29 ~~some newspaper of general circulation, published in the county in~~
 30 ~~which the administration is pending. The deadline for filing such~~
 31 ~~objections shall be at least fourteen (14) days prior to the date set for~~
 32 ~~hearing and the notice shall state that any objections to such final~~
 33 ~~account and petition for distribution must be filed in writing before~~
 34 ~~such date.~~ The personal representative shall at the time said account is
 35 filed furnish to the clerk the names and addresses of all persons entitled
 36 to share in the distribution of the residue of said estate, whose names
 37 and addresses are known to the personal representative or may by
 38 reasonable diligence be ascertained as set forth in the personal
 39 representative's petition for distribution, together with sufficient copies
 40 of said notice prepared for mailing. The clerk shall send a copy of said
 41 notice by ordinary mail to each of said parties at least fourteen (14)
 42 days prior to such date. Said parties or their attorney of record may

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1 waive the service by mail of this notice and where there is an attorney
 2 of record, service upon said attorney shall be sufficient as to the parties
 3 represented by said attorney. ~~Filing for such waivers shall not change~~
 4 ~~the requirement for notice by publication. Neither a notice nor a~~
 5 **hearing is required if all persons entitled to share in the final**
 6 **distribution of the estate waive the service of notice by mail and**
 7 **consent to the final account and petition for distribution without a**
 8 **hearing.**

9 (b) **If a person entitled to share in the distribution of the residue**
 10 **of the estate is unknown or cannot be located, the personal**
 11 **representative may give notice by one (1) publication in a**
 12 **newspaper of general circulation, published in the county in which**
 13 **the administration is pending. The deadline for filing an objection**
 14 **is fourteen (14) days before the hearing date. The notice shall state**
 15 **that objections to the final account and petition for distribution**
 16 **must be filed in writing before the hearing date.**

17 (c) If the account is intermediate, but the personal representative has
 18 therein petitioned the court that said account be made final as to the
 19 matters and things reported in said account, the same procedure as to
 20 hearing and notice shall be followed as in the case of a final account.

21 ~~(c)~~ (d) If the account is intermediate and the personal representative
 22 makes no request that said account may be made final as to the matters
 23 and things reported in said account, the court may order such notice as
 24 the court deems necessary or approve the same ex parte and without
 25 notice. Every such intermediate account approved without notice shall
 26 be subject to review by the court at any time and shall not become final
 27 until the personal representative's account in final settlement is
 28 approved by the court.

29 SECTION 24. IC 29-3-2-4 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) All findings,
 31 orders, or other proceedings under this article shall be in the discretion
 32 of the court unless otherwise provided in this article.

33 (b) If there is **not** a conflict of interest between a guardian of an
 34 estate and the **protected** person ~~whose estate is controlled by the~~
 35 ~~guardian~~, or among persons represented, orders binding a guardian of
 36 an estate bind the **protected** person. ~~whose estate the guardian~~
 37 ~~controls.~~

38 (c) Orders binding a guardian **of the person** bind the ward if a
 39 guardian of the ward's estate has not been appointed.

40 SECTION 25. IC 29-3-3-1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Any person
 42 indebted to a minor or having possession of property belonging to a

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1 minor in an amount not exceeding ~~five ten~~ thousand dollars ~~(\$5,000)~~
 2 **(\$10,000)** may pay the debt or deliver the property without the
 3 appointment of a guardian, giving of bond, or other order of court
 4 directly to any person having the care and custody of the minor with
 5 whom the minor resides.

6 (b) Persons receiving property for a minor under this section are
 7 obligated to apply the property to the support, use, and benefit of the
 8 minor.

9 (c) This section does not apply if the person paying or delivering the
 10 property knows that a guardian has been appointed for the minor or that
 11 proceedings for appointment of a guardian for the minor are pending.

12 (d) A person who pays or delivers property in accordance with this
 13 section in good faith is not responsible for the proper application of that
 14 property.

15 SECTION 26. IC 29-3-3-2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. When the entire
 17 property of an incapacitated person does not exceed the value of ~~three~~
 18 ~~thousand five hundred dollars (\$3,500)~~, **ten thousand dollars**
 19 **(\$10,000)**, the court may, without the appointment of a guardian, giving
 20 of bond, or other order of court, authorize:

21 (1) the deposit of the property in a depository authorized to
 22 receive fiduciary funds in the name of a suitable person
 23 designated by the court; or

24 (2) if the property does not consist of money, the delivery of the
 25 property to a suitable person designated by the court.

26 The person receiving the property shall hold and dispose of the
 27 property in the manner the court directs and is entitled to reasonable
 28 compensation and to reimbursement for reasonable expenses incurred
 29 in good faith on behalf of the incapacitated person and approved by the
 30 court.

31 SECTION 27. IC 29-3-8-6 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. If:

33 (1) a guardian sells or transfers during a protected person's
 34 lifetime property belonging to the protected person that is
 35 specifically devised to another in a will executed by the protected
 36 person; ~~before the protected person became an incapacitated~~
 37 ~~person;~~

38 (2) the protected person subsequently dies; and

39 (3) the devised property is consequently not contained in the
 40 protected person's estate following the death of the protected
 41 person;

42 the devisee may, at the devisee's option, elect to receive the value of the

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1 devised property, as valued at the time of death of the protected person,
 2 as a general devise or the proceeds of the sale or transfer as a specific
 3 devise.

4 SECTION 28. IC 30-1-5-1 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. Every executor,
 6 administrator, guardian, trustee, receiver or other fiduciary shall have
 7 the power, in such capacity, to invest in the following:

8 (1) Obligations issued pursuant to the provisions of the Federal
 9 Home Loan Bank Act (12 U.S.C. 1421 et seq.), as in effect on
 10 December 31, 1990, and in obligations issued by the FSLIC
 11 Resolution Fund.

12 (2) Life, endowment, or annuity contracts of legal reserve life
 13 insurance companies duly licensed by the insurance
 14 commissioner for the state of Indiana to transact business within
 15 the state. The purchase of contracts authorized by this subdivision
 16 shall be limited, however, to executors or the successors to their
 17 powers when specifically authorized by will, to guardians on
 18 authorization of the court having probate jurisdiction over the
 19 guardianship, and to trustees. Such contracts may be issued on the
 20 life or lives of a protected person or persons, a beneficiary or
 21 beneficiaries of a trust fund, or according to the terms of a will, or
 22 upon the life or lives of persons in whom the protected person or
 23 beneficiary has an insurable interest. Life or endowment or
 24 annuity contracts may be purchased by trustees in the absence of
 25 an express prohibition against such purchase contained in the
 26 instrument creating the trust. ~~However, a~~ **The** trustee may not
 27 expend ~~in trust income and principal to pay~~ annual premiums
 28 for contracts authorized by this subsection ~~an amount in excess of~~
 29 ~~twenty-five percent (25%) of the trust income for the calendar~~
 30 ~~year immediately preceding the date of purchase, unless a greater~~
 31 ~~amount is authorized subject to limitations that are:~~

32 **(A) imposed** by the court having probate jurisdiction over the
 33 trust; or

34 **(B) is** expressly authorized in the trust instrument.

35 In the absence of express provision in the trust instrument to the
 36 contrary, the trustee, as trustee, shall possess all the incidents of
 37 ownership in contracts so issued and the trustee as trustee, or the
 38 beneficiary or beneficiaries of the trust shall be the beneficiary or
 39 beneficiaries of such contracts.

40 (3) Obligations of the federal government, or any federal agency
 41 or instrumentality, whenever a governing instrument or order
 42 directs, requires, authorizes, or permits investment in such

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obligations, either directly or in the form of securities of, or other interests in, any open end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), as in effect on December 31, 1990. However, the portfolio of the investment company or investment trust must be limited to obligations of the federal government or any federal agency or instrumentality, and to repurchase agreements fully collateralized by such obligations to which obligations the investment company or investment trust takes delivery either directly or through an authorized custodian.

SECTION 29. IC 30-4-1-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8. If a trust creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the settlor's intention, in requiring that the grantee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.**

SECTION 30. IC 30-4-1-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 9. A trust shall not operate as to the exercise of a power of appointment, which the settlor may have with respect to any real or personal property, unless by its terms the trust specifically indicates that the settlor intended to exercise the power.**

SECTION 31. IC 30-4-1-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 10. If a distribution in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the distribution is to take effect in possession or enjoyment, in such shares they would receive, under the applicable law of intestate succession, as if the designated ancestor had then died intestate, unmarried, and owning the subject matter of the distribution.**

SECTION 32. IC 30-4-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 11. The meaning and legal effect of a distribution under a trust shall be determined by the law of the state selected by the settlor in the trust, unless the application of that law is contrary**

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1 to the public policy of this state.

2 SECTION 33. IC 30-4-1-12 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2001]: **Sec. 12. In construing a trust making a distribution to a**
5 **person described by relationship to the settlor or to another**
6 **person, a person born out of wedlock shall be considered the child**
7 **of the person's mother. If the right of a person born out of wedlock**
8 **to inherit from the person's father is established under IC 29-1-2-7,**
9 **the person shall also be considered a child of the person's father.**

10 SECTION 34. IC 30-5-6-4 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The attorney in
12 fact shall keep complete records of all transactions entered into by the
13 attorney in fact on behalf of the principal.

14 (b) Except as otherwise stated in the power of attorney, the attorney
15 in fact is not required to render an accounting. The attorney in fact shall
16 render a written accounting if an accounting is **ordered by a court**,
17 requested by the principal, a guardian appointed for the principal, or,
18 upon the death of the principal, the personal representative of the
19 principal's estate, or an heir or legatee of the principal.

20 (c) An attorney in fact shall deliver an accounting requested under
21 subsection (b) to:

- 22 (1) the principal;
- 23 (2) a guardian appointed for the principal;
- 24 (3) the personal representative of the principal's estate;
- 25 (4) an heir of the principal after the death of the principal; or
- 26 (5) a legatee of the principal after the death of the principal;

27 not later than sixty (60) days after the date the attorney in fact receives
28 the written request for an accounting.

29 (d) Not more than one (1) accounting is required under this section
30 in each twelve (12) month period unless the court, in its discretion,
31 orders additional accountings.

32 (e) If an attorney in fact fails to deliver an accounting as required
33 under subsection (c), the person requesting the accounting may initiate
34 an action in mandamus to compel the attorney in fact to render the
35 accounting. The court may award the attorney's fees and court costs
36 incurred under this subsection to the person requesting the accounting
37 if the court finds that the attorney in fact failed to render an accounting
38 as required under this section without just cause.

39 SECTION 35. IC 30-5-9-9 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) Except as
41 provided in subsection (b), a person refusing to accept the authority of
42 an attorney in fact to exercise a power granted under a power of

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attorney is liable to the principal and to the principal's heirs, assigns, and the personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf. **In any action brought in court to either force the acceptance of the authority of the attorney in fact or pursue damages as a result of the person's refusal to accept the authority of an attorney in fact, the person found liable for refusing to accept the authority of an attorney in fact shall pay the following:**

(1) **Three (3) times the amount of the actual damages.**

(2) **The attorney's fees of the person bringing the action to court.**

(3) **Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.**

(b) A person refusing to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable under subsection (a) if:

(1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;

(2) the duration of the power of attorney specified in the power of attorney has expired; or

(3) the person has actual knowledge of the death of the principal.

(c) This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise.

SECTION 36. IC 34-45-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) This section applies to suits or proceedings:

(1) in which an executor or administrator is a party;

(2) involving matters that occurred during the lifetime of the decedent; and

(3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator.

(b) This section does not apply in a proceeding to contest the validity of a will or a proceeding to contest the validity of a trust.

(c) This section does not apply to a custodian or other qualified witness to the extent the witness seeks to introduce evidence that is otherwise admissible under Indiana Rule of Evidence 803(6).

(d) Except as provided in subsection ~~(c)~~, (e), a person:

(1) who is a necessary party to the issue or record; and

(2) whose interest is adverse to the estate;



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1 is not a competent witness as to matters against the estate.

2 ~~(c)~~ (e) In cases where:

3 (1) a deposition of the decedent was taken; or

4 (2) the decedent has previously testified as to the matter;

5 and the decedent's testimony or deposition can be used as evidence for
6 the executor or administrator, the adverse party is a competent witness
7 as to any matters embraced in the deposition or testimony.

8 SECTION 37. IC 6-4.1-3-12.5 IS REPEALED [EFFECTIVE JULY
9 1, 2001].

10 SECTION 38. [EFFECTIVE JULY 1, 2001] IC 6-4.1-4-1;
11 IC 6-4.1-4-2; IC 6-4.1-4-7; IC 6-4.1-9-1; IC 6-4.1-9-2;
12 IC 6-4.1-11-3; IC 6-4.1-11.5-9; IC 29-1-4-1; IC 29-1-7-7;
13 IC 29-1-7-7.5; IC 29-1-7-17; IC 29-1-7.5-4; IC 29-1-14-1;
14 IC 29-1-14-2; IC 29-1-14-8; IC 29-1-14-10; IC 29-1-14-16;
15 IC 29-1-14-18; IC 29-1-14-19; IC 29-1-14-21; IC 29-1-16-6, and
16 IC 34-45-2-4, all as amended by this act, apply to the estate of an
17 individual who dies after June 30, 2001.

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